IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2188 OF 2005

THE STATE OF MAHARASHTRA)
(Through A.C.P. Ulhasnagar)
District Thane)) PETITIONER

Versus

1. JAYESH MANSUKHLAL MEHTA)
R/o 4/Vanik Niwas, Gurukul Lane
Near Gurukul High School,)
Tilaknagar, Ghatkopar (East))
Mumbai - 77)

2. VIJAY PRAKASH KAPOOR @)
VIJAYSING, R/o F-701,Mayurdhwaj
Apartment, Indraprast Extension
Fadfadganj, Delhi-92)

3. ZULABHAI KASAM KAREDIYA)
Aarey Milk Colony, Unit No.20,)
Jamatkhana Chawl, Room No.1,)

Goregaon (East), MUMBAI)

4. MUKESH SHANTILAL DOSHI)
R/o Sukruti Building, 304, Plot
No. 16,Sector-30, Opposite)
Sanpada Railway Station, Vashi)
Navi Mumbai.) .. RESPONDENTS

Mrs. M.M. Deshmukh, APP
Mr. Ganesh Gole for respondents

CORAM:-SMT. RANJANA DESAI, J.
DATED ON WHICH THE JUDGMENT IS
RESERVED: 16TH NOVEMBER, 2006
DATE ON WHICH THE JUDGMENT IS
PRONOUNCED:28th NOVEMBER, 2006

JUDGMENT:

. In this writ petition, the State of Maharashtra through A.C.P. Ulhasnagar Division, District Thane, has challenged order dated 8/3/04 passed by the Special Court, Thane, in Criminal Misc. Application No. 20 of 2004.

2. Few facts which give rise to this writ petition may have to be shortly stated.

. On 9/11/03 an offence came to be registered under Sections 420, 467, 468, 471 read with 34 of the Indian Penal Code and Sections 18(a)(I), 18(c), 17(b) and 27 of the Drugs and Cosmetic Act, 1940 and under Sections 77, 78, 89 of Trade and Merchandise Marks Act and under Section 63 of the Copyright Act, 1957 at the Kalwa Police Station being C.R. No. 184/03.

. On the basis of the information police conducted a raid, when one Sidharth was proceeding in a Maruti Car on Kalwa-Belapur road. He was in possession of several medicines, worth Rs.6,53,890/-. The medicines were found to be of reputed companies and it was found that the said person was possessing them without any valid permit and he was trying to sell them by fabricating false builty challan.

. On 9/11/03 the said Sidharth was arrested. On the same day respondent 1/accused 2 was arrested. On 20//11/03 respondent 2/accused 3 was arrested.

On 9//12/03 respondent 3/accused 4 was arrested and on 8//1/04 respondent 4/accused 5 was arrested. It was found that two other accused i.e. Raghavendra and Sujitkumar, who were concerned with the said offence were not traceable. After the arrest of the respondents, they were remanded to the police custody and judicial custody from time to time.

. On 22/11/03 respondent 1 was released on bail and on 12/12/03 respondent 2 was released on bail. Respondent 3 was released on bail on 21/1/04 and respondent 4 was released on bail on on 23/1/04.

3. It is the petitioner’s case that during the course of the investigation of the said offence it was revealed that the accused had by forming organised crime syndicate committed other offences also and, therefore, by taking the approval of the Additional Commissioner of Police, Thane on 29/1/04, the provisions of the Maharashtra Control of Organised Crime Act, 1999 ("M.C.O.C. Act" for short) were applied to the respondents. According to the petitioner on 2/2/04 application was made before the Special Court, Thane for remand of the respondents to the police custody for the purposes

of investigation. The said application was rejected and hence the the petitioner has approached this court for setting aside order dated 8/3/04 and for remanding the accused to police custody.

4. I have heard Ms. Deshmukh, the learned APP. She contended that the learned Judge has adopted an erroneous approach while rejecting application filed by the petitioner. She submitted that the application filed by the petitioner was not just for cancellation of bail. It was basically an application for custody under the M.C.O.C. Act on account of application of the provisions of the M.C.O.C. Act to the respondents. She submitted that since the M.C.O.C. Act was applied to the respondents' case the police were entitled to investigate denovo the charges levelled under the M.C.O.C. Act. The learned counsel contended that this important aspect was not considered by the learned Judge at all.

5. In support of her submissions the learned counsel relied on the judgment of this court in **Sarang Arvind Goswami v. State of Maharashtra,**

2005(3) Mh. L. J. 774. She submitted that considering the seriousness of the crime this court should grant custody of the respondents to the police so that the offence could be properly investigated by interrogating the respondents.

6. On the other hand Shri Gole, the learned counsel appearing for the respondents submitted that respondent No. 3 is already discharged. He pointed out that the other respondents are on bail for a considerable period. There are no allegations that they have misused the liberty and, therefore, no case is made out for cancellation of their bail. He submitted that on 7/2/04, the petitioners made an application to the Special Court stating that the provisions of the M.C.O.C. Act have been applied to the respondents' case pursuant to the approval granted by the Additional Commissioner of Police, Thane on 29/1/04 and in order to carry out further investigation the police need time and, therefore, time to submit charge-sheet may be extended by a period of 30 days as per the provisions of Section 21 of the M.C.O.C. Act. He submitted that accordingly on 7/2/04, the learned Judge extended the time by granting the

petitioner's application under Section 21(2)(b) of the M.C.O.C. Act. Mr. Gole contended that accordingly investigation has been carried out by the police and, therefore, there is no reason why the police should be given further custody of the respondents.

7. The learned counsel submitted that the rigours of Section 37 of the M.C.O.C. Act would not be applicable to the facts of this case as the respondents are not in custody. He further submitted that the case is in progress. Nine witnesses have already been examined. The case is likely to be concluded soon and hence there is no necessity of cancelling bail. He further submitted that the judgment of this court in **Sarang Goswami's case (supra)** is not applicable to the facts of this case because in that case the petitioner had not availed of the bail order. He was in custody. He submitted that the facts of **Sarang Goswami's case (supra)** materially differ from the facts of the instant case.

8. The learned counsel also submitted that in fact the writ petition filed by the petitioner is not

maintainable. He submitted that Section 12 of the M.C.O.C. Act provides for an appeal from any judgment, sentence or order, not being an interlocutory order of a Special Court to the High Court. Section 12 further provides that every such appeal has to be preferred within 30 days from the impugned judgment, sentence or order. The learned counsel contended that against the order rejecting the application of the State for cancellation of bail either an appeal under Section 12 of the M.C.O.C. Act, ought to have been filed within 30 days or an application under Section 48 of the Criminal Procedure Code ought to have been filed. He submitted that the instant petition deserves to be dismissed on this count alone.

9. I have applied my mind to the submissions advanced by both sides. The learned Special Judge has observed while dismissing the application filed by the petitioner that overwhelming circumstances are necessary for cancellation of bail. In this connection he has made reference to the judgment of the Supreme Court in **State v. Sanjay Gandhi, AIR 1978 SC 961**. He has observed that case of the petitioner is that provisions of M.C.O.C. Act have

been added to the crime. However, there is no allegation that the accused have tampered with prosecution witnesses or that they have committed any breach of any conditions or that they are likely to abscond. He has further observed that mere fact that some new penal sections are added to the crime would not be a ground for cancellation of bail.

10. It is true that overwhelming circumstances are necessary to persuade the court to cancel the bail order. Ms. Deshmukh, the learned APP contended that this is not strictly a cancellation of bail application. What the petitioner is seeking is the custody of the respondents for further investigation because of the application of M.C.O.C. Act. But obviously the result of granting the custody of the respondents to the police would result in cancellation of their bail. The question, therefore, is whether by reason of mere application of M.C.O.C. Act, which contains stringent provisions to deal with organised crime and also as regards grant of bail, bail already granted in connection with offences under the I.P.C. should be cancelled.

11. In **Sarang Swami's case (supra)** this court was concerned with, though not identical, but somewhat similar fact situation. The applicant therein had been arrested in connection with a case which was originally registered alleging offences under the I.P.C. The applicant was released on bail on 4/2/05 but he had not availed of the bail order. Investigation was in progress. Offences under the M.C.O.C. Act were added to the said case after formal approval was given by the Competent Authority on 10/2/05. This court observed that it is only upon grant of formal approval that the offences under the M.C.O.C. Act would be registered and investigated and not otherwise. The approval was a subsequent development which can be and ought to be considered by the court for cancellation of bail.

12. It was observed that the fact that offence under the provisions of M.C.O.C. Act are founded on previous offences will make no difference. This court, however, noted that in that case one more offence was registered against the applicant on 21/2/05. This court observed that the applicant

will have to be taken into custody in relation to the newly registered offence under the M.C.O.C. Act and he can be released on bail only if the applicant also satisfies the rigours of the provisions of the M.C.O.C. Act. This court found that the learned Sessions Court had rightly cancelled the bail of the accused. This court clarified that the cancellation of bail was not only because of the subsequent development but also by necessity of law, in view of the stringent provisions of M.C.O.C. Act. I am in respectful agreement with the learned Single Judge.

13. M.C.O.C. Act was enacted to enable the police to deal with organised crime syndicate. Under Section 21 thereof notwithstanding anything contained in the Criminal Procedure Code no person/accused of an offence punishable under the M.C.O.C. Act shall, if in custody be released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application of such release and when the public prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and

that he is not likely to commit any offence while on bail. Sub-section 6 of Section 21 makes it clear that the limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail. It is obvious that looking to the seriousness of the offences with which M.C.O.C. Act deals provision for bail is made stringent.

14. But in my opinion, the facts of the present case are different. Here unlike in **Sarang Goswami's case (supra)**, the accused have already been released on bail. As of today they are not in custody and one of them has been discharged. Moreover it is not the case of the police that any fresh offences have been registered against the accused as in **Sarang Goswami's case (supra)**. The trial is in progress. Nine witnesses have already been examined. I am informed that the trial is likely to come to an end in the near future.

15. On 7/2/04 an application was made by the investigating agency that in view of application of the provisions of M.C.O.C. Act, time to file

charge-sheet may be extended by a period of 30 days as the police wanted to carry out further investigation. That application was granted. The application filed by the police for custody dated 9/2/05 merely states that further investigation is necessary and hence the bail of the accused be cancelled and they may be produced before the court. In the application it is not indicated as to what kind of investigation is still to be carried out. There is not a single sentence giving any idea about the possible investigation which the police want to carry out now. The present application will have to be considered against the background of these facts. In addition to this the fact that admittedly the accused have not misused the liberty granted to them, that they have not committed any further crimes, and that they have not committed breach of conditions imposed on them will have to be taken into consideration. It is not the case of the petitioner that the accused are likely to abscond. It is true that ordinarily where M.C.O.C. Act is applied, bail may have to be cancelled. Though I do not want to depart from the view taken by the learned Single Judge in **Sarang Goswami's case (supra)**, in my view in this case,

the learned Special Judge has rightly refused to grant custody of the respondents/accused to the petitioner by cancelling their bail. The facts of this case are singularly different. In my opinion, the impugned order does not merit any interference.

16. I am informed that trial is in progress. The learned Judge seized of the matter should conduct it on day to day basis and conclude it at the earliest. The respondents must co-operate with the court.

17. Needless to say that the petitioner will be at liberty to move for cancellation of the bail granted to the respondents if it appears that the respondents are misusing the liberty granted to them or that they are likely to abscond or on any such ground. Criminal writ petition is disposed of in the aforestated terms.

JUDGE.